

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SAN FRANCISCO BRANCH OFFICE  
DIVISION OF JUDGES

**JANUS OF SANTA CRUZ**

**and**

**Case 32–CA–226320**

**NATIONAL UNION OF  
HEALTHCARE WORKERS**

*Edris W.I. Rodriguez Ritchie, Esq.,*  
for the General Counsel.

*Rona P. Layton, Esq., (Layton Law Firm),*  
for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

GERALD M. ETCHINGHAM, Administrative Law Judge. Edgar Fuerte, an individual (Charging Party or Fuerte), filed the original charge in Case 32–CA–226320 on August 27, 2018,<sup>1</sup> and a first amended charge on August 28. The General Counsel issued a complaint on December 21 (complaint), and the Respondent Janus of Santa Cruz (Respondent or Janus) answered the complaint on January 2, 2019, and filed an amendment to its original answer on February 20, 2019.

This case involves Respondent’s unlawful discipline of the Charging Party on August 10, soon after the Charging Party attended bargaining session meetings and where he and other union employees at Respondent appeared at a locally televised Santa Cruz County (County) Board of Supervisors’ meeting wearing union apparel and seeking funds to add a second bathroom to Respondent’s Sobering Center where the Charging Party works. Respondent denies the essential allegations in the complaint.

This case was tried in Oakland, California on March 26, 2019. Closing briefs were submitted by the General Counsel and the Respondent on April 30, 2019. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

---

<sup>1</sup> All dates are 2018 unless otherwise indicated.

## FINDINGS OF FACT

### I. JURISDICTION

5           The parties admit, and I find that the Respondent, a California non-profit corporation, with an office and place of business located in Santa Cruz, California (Respondent's Facility), has been engaged in providing treatment for substance abuse and related disorders. The parties also admit, and I further find that during the 12-month period ending on November 30, Respondent has derived  
10       gross revenue in excess of \$250,000, and during that same period purchased and received goods valued in excess of \$5,000 which originated outside the State of California. I further find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it has been a health care institution within the meaning of Section 2(14) of the Act. (GC Exh. 1(e); GC Exh. 1(g)).<sup>2</sup> The parties further admit, and I find that at all material times, the  
15       National Union of Healthcare Workers (the Union) has been a labor organization within the meaning of Section 2(5) of the Act. Id.

### II. UNFAIR LABOR PRACTICES

#### A.

#### *Janus' General Business and Background of Sobering Center Job Duties*

20           Janus is a large drug and alcohol rehabilitation program in the County of Santa Cruz. They have several different elements. There is a prenatal program for pregnant women; a methadone clinic as well, near the Health and Human Services Center; a residential facility on  
25       7th Avenue in Santa Cruz; and a Sobering Center, which is also known as a drunk tank on 265 Water Street, Santa Cruz, California, next to the Santa Cruz County Jail. For example, the Santa Cruz police may arrest somebody on a public intoxication charge for a first-time Driving Under the Influence of drugs and/or alcohol (DUI), and they will bring them to the Sobering Center.

30           Respondent has 11 employees who work at the Sobering Center and one supervisor/manager, Erin Tully (Tully). Tully is supervised by Respondent's director Jaime Campos (Director Campos).

35           Since May 28, Nicholas Brown (Brown) has been an employee at Respondent and he has worked at Respondent as an emergency medical technician (EMT) under the designation of medical assistant. Brown's job as an EMT at Respondent is to screen in and screen out appropriate inmates/patients for registration at the Sobering Center.

---

<sup>2</sup> Abbreviations used in this decision are as follows: "Tr." for transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "GC Br." for the General Counsel's brief; and "R. Br." for the Respondent's brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

Brown is employed 5 days a week, 8.5 hours per shift with a 30-minute lunchbreak. Brown works on a 2-person team, so he is always paired with another Respondent employee on each shift.

5 Brown's position includes medically assessing these inmates/patients making sure that they are in good enough health to stay at the Sobering Center, and also monitor them until they are sober enough to take care of themselves. Brown also responds to any emergencies that arise and any medication issues at the Sobering Center. His job is to medically assess and reassess and document everything.

10 Brown is a union member and knows he is represented by the Union in his workplace at Respondent, but Brown does not actively participate as a union advocate or as a member of the collective bargaining team for union employees at the Respondent.

15 Brown and Charging Party Fuerte work together at times in Respondent's Sobering Center.<sup>3</sup> Fuerte is an intake referral specialist so either Fuerte is Brown's partner on a shift, or he is coming on to a shift as Brown is leaving his shift and they briefly do a 30-minute shift exchange, where they relay patient information like where their belongings are located, and exchange other pertinent information that the remaining employee is going to need coming into his or her next shift.

20 Charging Party Fuerte has worked at Respondent's Sobering Center since May 2015 as an intake referral specialist who job duties include being at the initial receiving end of arrested inmates/patients that come in from all the local law enforcement agencies in the County. Fuerte works 4 days a week, 32 hours total per week at Respondent.

25 The Sobering Center is an alternative to going to jail. Fuerte processes these inmates/patients, reads them Respondent's rules and policies they have to follow, has them agree and sign, Fuerte also signs a form as does the arresting officer. Fuerte maintains copies of paperwork for Respondent's files and enters each inmate/patient's data into Respondent's computer system.

30 Fuerte also monitors the inmates/patients along with the EMT—throughout their stay, until Respondent determines they have sobered up and the drugs or alcohol have been removed from their system by checking them vitally as to their blood/alcohol (BAC) levels—that is done by the EMT paired with Fuerte. Two employees, the EMT and the intake referral specialist monitor inmates/patients throughout their stay at Respondent's Sobering Center.

Supervisor Tully is the immediate supervisor of Brown and Fuerte.

---

<sup>3</sup> While Fuerte and Brown are occasionally paired on shifts or may follow each other in consecutive shifts at Respondent, they are not social friends who get together outside of work.

Respondent's Employee Handbook from 2017 is comprised of 57 pages and contains sections called: Retention of Disciplinary Action Records and General Standards of Conduct which contains the following paragraphs stating that:

It is the policy of Janus of Santa Cruz to retain written warnings and accompanying documents in an employee's file for one year past the date of the expiration of the warning, subject to no further disciplinary action being warranted.

For serious infractions and final warnings, retention in the employee's file is for two years beyond the expiration of the warning. Serious infractions might include harassment, violence in the workplace, discrimination, or other violations of the Code of Conduct.

After being removed from an active employee's file, the warning will be filed confidentially in the Human Resources office and will be subject to regular Human Resources records retention policy.

...

We strive to take a constructive approach to disciplinary matters to reasonably ensure that actions, which would interfere with operations or an employee's job, are not continued.

Although there is no way to identify every possible violation of standards of conduct, the following is a partial list of infractions which are prohibited and will not be tolerated:

...

- Threatening, intimidating, coercing, using abusive or vulgar language, or interfering with the performance of other employees....

(GC Exh. 2 at 16 and 20.)

#### *B. Charging Party Fuerte's Union and Protected Concerted Activities*

Like Brown, Fuerte has also been a union member at Respondent but for approximately 2 years. In addition, Fuerte has continuously and actively participated in an organizing campaign for the Union at Respondent beginning in the first months of 2017. At that time, Fuerte and two other former coworkers began talking amongst each other about forming a union for everything they saw wrong happening at Respondent's different locations in Santa Cruz, and the group of three reached out to their first union representative of the Union.

Fuerte continued to work on the Union's organizing campaign at Respondent after he met with the union representative. Fuerte and his two coworkers and co-organizers then had

meetings with the union representative and later meetings after enrolling other coworkers and having larger meetings. Eventually by March or April 2017, Fuerte and the organizing committee got a petition going by having other coworkers sign and meet with people individually at their worksites. Fuerte asked coworkers at the Sobering Center to sign the petition one day in the parking lot of the Sobering Center while on break or before work.

Toward the end of May or the beginning of June 2017, Fuerte presented his coworkers a second petition for them to sign indicating their support of bringing the Union into Respondent.

By early July 2017, Fuerte had participated with the Union to bring about a union election and Fuerte prepared and distributed to his coworkers a petition flyer with his photograph and name on it with the flyer saying that Fuerte and the union organizing committee had filed for a union election in support of unionizing at Respondent. (GC Exh. 6.)

Around this same time in early to middle of July 2017, Fuerte distributed another union flyer with his photograph on it to his coworkers in support of unionizing. This second flyer also contained the message that Fuerte and various other named Respondent employees were voting “yes” to unionize at Respondent and that the National Labor Relations Board would be mailing employees ballots to vote with on July 24 and that the employees must vote for or against the Union by August 7, 2017. (GC Exh. 7.)

Also, in mid-to-late July 2017, Fuerte also distributed a third flyer to his coworkers that he used in the organizing campaign leading up to the union election at Respondent, this one with his name and photograph on it as the Sobering Center employee who supports the Union and he also posted one on the side of the refrigerator at the Sobering Center before the union election. (GC Exh. 8.)

*C. The Respondent’s Sobering Center’s Floorplan and Fuerte’s Protected Unsanitary Bathroom Complaints*

Fuerte identified a detailed drawing or floorplan of the Sobering Center office where he works. (Tr. 51–52; GC Exh. 11.) The Respondent office where Fuerte works is also known as the Sobering Center front intake office. Id. This Sobering Center floorplan also shows where Fuerte’s desk is located in relation to the lone bathroom, the three doors, the employee breakroom, the desk that first appeared on August 6, and a microwave and sink. (GC Exh. 11.)

*D. Charging Party Fuerte’s Televised Public Protected Concerted Activity Requesting a New Second Bathroom for Respondent’s Sobering Center at the June 19 and the June 29 County Board of Supervisors’ Meetings and at Bargaining Sessions with Respondent CEO Escalarte*

On June 19, 2018, Fuerte spoke before the County Board of Supervisors for the first of two appearances there. Both times, Fuerte made public comments there to advocate for his fellow coworkers at Respondent in order to get assistance funding from the County of Board

Supervisors, some budget funding to Respondent for improvements to add a second bathroom at the Sobering Center, to disburse to Respondent so the extra funds would also trickle down to Respondent's employees to give them better wages and salaries. (Tr. 41–45.)

5 Fuerte spoke at this first June 19 County Board of Supervisors meeting along with eight other Respondent employees who supported the Union along with Union Representative Justin Palmer (Palmer). (GC Exh. 10.) Fuerte's photograph from the June 19 meeting shows Fuerte at the meeting in front of a microphone wearing a union sweater with the highly visible union logo on the front chest and on the back of the sweater.<sup>4</sup> (GC Exh. 10.) Fuerte  
10 also wore his union lanyard around his neck to both June County Board of Supervisors meetings where he spoke. (Tr. 41–45; GC Exh. 10.)

Fuerte opined that Respondent receives funds from the County of Santa Cruz to operate its business. (Tr. 41.)

15 On or before June 29, Fuerte spoke a second time with four other Respondent employees who supported the Union and again with Union Representative Palmer at another County Board of Supervisors meeting again asking for more funds for Respondent. (Tr. 41–46.)

20 In addition to attending and speaking at the two June County Board of Supervisors meetings, Fuerte and Union Representative Palmer also met more than once with County Supervisor John Leopold (Leopold) before August 2018 to discuss and inquire whether the County could provide Respondent with more funds to help and assist and help out Fuerte's coworkers at Respondent. (Tr. 46–48; GC Exh. 9<sup>5</sup>.)

25 These meetings between Fuerte and County supervisors from June - July 2018 occurred at the same time that the Union and its bargaining team, including Fuerte, were meeting with Respondent's representatives, including Respondent's CEO Rudy Escalante (Escalante), to bargain for an initial collective-bargaining agreement. Fuerte has attended between 10–12  
30 bargaining sessions and Fuerte has voiced workplace concerns from his coworkers at these bargaining sessions including the great need for a second bathroom at the Sobering Center due to its very unsanitary condition.<sup>6</sup> (Tr. 46–49.)

---

<sup>4</sup> Fuerte confidently testified that since October 2017, he has worn this sweater with the highly visible union logos and his union neck lanyard almost every day to work at Respondent unless the sweater is being cleaned at home. Tr. 41–45; GC Exh. 10.

<sup>5</sup> Fuerte identified other union members in the photo with Supervisor Leopold and him. Starting with the first person, Brandt (phonetic), who is a counselor at the Janus Methadone Clinic; Anthony (phonetic), next to him, also works with Fuerte at the Sobering Center; Leopold, one of the county Board of Supervisors in the center, then Fuerte; and then another counselor over at the Janus Main Facility, Jason (phonetic). Tr. 49–50; GC Exh. 9.

<sup>6</sup> Director Campos was aware of Fuerte's bargaining activities prior to the August 10 Letter of Counseling as Fuerte emailed Campos regarding his attendance at a bargaining meeting. GC Exh. 13. In addition, Respondent was aware of Fuerte's union activities as on September 9, 2017, Campos informed Respondent's new CEO Escalante that: "Edgar [Fuerte] is a big union supporter, ... wants another bathroom installed at the Sobering Center but that's not financially practical ... and has displayed resistance with all three managers of the facility. Does good work when he [Fuerte] is able to get de-escalated and step out of entitlement." GC Exh. 14 at 1.

Fuerte forcefully opined that the main issue, from the Sobering Center employees' perspective, is the dire need for a second bathroom. Specifically, Fuerte has discussed this at least 30 times with his coworkers over 4 years and Fuerte's coworkers have also expressed dissatisfaction with the lone bathroom because it is unsanitary. This topic of dissatisfaction for the lone bathroom in the Sobering Center has also been discussed by Fuerte and brought up at bargaining sessions with Respondent's representatives that the single bathroom at the Sobering Center is very unsanitary being that Fuerte's front intake desk is where he and other workers sit in very close proximity to and the bathroom door, he can touch the door from his desk, and the toilet is right on the other side and one sitting at this desk can hear everything and smell everything from coworkers to the inmates/patients who use the bathroom and frequently have gotten sick there over the past 4 years. (Tr. 47–50.)

In addition to bringing up Fuerte's and his coworkers' dissatisfaction with the Sobering Center bathroom at the June/July County meetings and at the bargaining table with Respondent's bargaining team, Fuerte has also brought up this same issue with his first manager, Gabriel Miller (Miller); the first Respondent CEO Rod Libbey; the second manager, Camm; and Fuerte's third manager, Sam (phonetic). Fuerte opined that Supervisor Tully was previously one of his coworkers so he did not have to bring the issue up with her because Tully also expressed having issues with and disapproved of the unsanitary bathroom at the Sobering Center. (Tr. 48–49.)

Before August 2018, Fuerte also disclosed the unsanitary bathroom issue to current Director Campos, with Rudy Escalante (Escalante), Respondent's new CEO, and with Jensen \_\_\_\_\_ who Fuerte does not know his full name, but Fuerte believes he is Respondent's director who oversees CEO Escalante's position. (Tr. 48–49.)

#### *E. The August 6, 2018 Incident at the Sobering Center*

On Monday, August 6, 2018, Fuerte arrived at work in the Sobering Center around 3 p.m. (Tr. 52.) Fuerte arrived and entered through the front door of the Sobering Center. Fuerte at hearing pointed to the area marked "door" just above the words "outside" as to where he entered the Sobering Center on August 6, 2018. As Fuente walked in, he saw Jesse Gifford (Gifford), Respondent's IT Manager, sitting in the chair marked "chair" on GC Exh. 11, an EMT who no longer works at Janus, Kyle, was just beneath the area of the larger desk in GC Exh. 11. (Tr. 52–53.) Fuerte estimates that Gifford works on computer problems at the Sobering Center on average of two times per month.

Fuerte recalled that as he was making his way to the break room, and he was walking through the front office; Gifford is facing the smaller desk, working on the computer. Fuerte next sees for the first time a new huge desk that Respondent had installed and was not in the Sobering Center before August 6, 2018. (Tr. 53–54.)

Fuerte next asks his coworkers, as he continued walking toward the breakroom—"What's this [new larger desk] shit?" and he kept walking to the break room. (Tr. 54.)

Neither Gifford nor Kyle responded to Fuerte's question. (Tr. 54.)

Next, Fuerte sets his backpack down in the breakroom and then he immediately walked back, right over to the area just in front of the area marked "sink," and still no one responds. (Tr. 54; GC Exh. 11.)

5        Thereafter, Fuerte asks to no one in particular and not in an angry tone: "How are we supposed to work around this [larger desk]?" No one responded to Fuerte. Id.

Next, Fuerte's coworker who was going to begin her shift with Fuerte - Lusy, walked in from the door marked "door" just above the words "outside," towards the break room and back into the front intake office, sitting down next to the wall, to the left of the large word "desk". (Tr. 55.)

10        Fuerte also indicated that Supervisor Tully came through the top door on GC Exh. 11, located next to the word "microwave", and positioned herself just beneath the area marked "door", next to the word "microwave". (Tr. 55-56.)

Shortly after that, Gifford, without turning around, still facing the desk and the computer, just spontaneously said— "stopped working." (Tr. 56.)

15        Next Gifford asked: "You know what?" As he stood up and turned around, all at the same time, standing up and saying: "I don't give a shit anymore - trying to get wireless internet for your personal devices." (Tr. 56.)

20        Gifford next looks at Fuerte, near the sink, Supervisor Tully by the microwave, and Kyle, beneath the large desk area, as Gifford walked to the break room, and then he stares at Lusy, to the left of the large desk area. She was on her cell phone. Gifford next walked into the break room. (Tr. 56-57.)

Gifford stayed in the breakroom for probably about a minute to a minute and a half, and then came back and sat at his chair, facing, again, the computer, resumed what he was doing before on the computer. (Tr. 57.)

25        Fuerte recalls that it was really quiet for maybe a couple minutes, with dead silence. Fuerte opined that everybody could tell Gifford was upset, so nobody said anything. Fuerte did. Fuerte tried to break the discomfort and ease the situation by saying:

Hey, it's okay. I don't really need wireless. You know, we're okay with just desktops. That's all we need to work here.

30        (Tr. 57.)

Next, Fuerte recalled that it was still quiet for about another couple minutes, and then Gifford, as the IT manager, again, not turning around from his computer to look at the group of Respondent employees in the Sobering Center, just said: "You know what, guys? I shouldn't



have said that. I'm sorry. I'm just stressing out.” (Tr. 57.)

Fuerte next says that he knew that Gifford was not directing anything toward Respondent’s employees, so Fuerte walked over to Gifford and said: “You know what, Jesse [Gifford], it's okay, man. Don't worry. You know what? Sometimes people have bad days, and this happens to be that day for you. It's okay, man. No biggie. Don't worry.” (Tr. 57.)

Shortly after that, Kyle left the Sobering Center as his shift ended. Next, Fuerte, Lusy and Supervisor Tully just went and began their work shift with nothing further said about the new large desk or the wireless connection problem. Moreover, at no time during these above-referenced conversations on August 6, 2018, were any patients present in the front intake office or anywhere else on the premises of the Sobering Center. (Tr. 58.)

*F. Director Campos’ Other Meetings Before Disciplining Fuerte on 8/10/19*

Later on August 6, Manager Gifford met with Director Campos to update Campos regarding his work. (Tr. 97–98.) During this meeting, Gifford told Campos that Fuerte had used the word “shit.”

Gifford told Campos that he “felt the atmosphere change to very negative immediately when [Fuerte] came in and [questioned] ... the [new large] table.” (Tr. 98.) Gifford said that he based this on the room being “quiet.” *Id.*

Campos also recalled that Gifford told him that Fuerte’s August 6, 2018 statement was “oh, what is this shit, typical Janus, putting something like this in here without asking us.” (Tr. 117.)

On August 6, Gifford also told Campos that Fuerte had made a statement about Respondent’s Sobering Center bathroom. (Tr. 98, 103.) Gifford did not ask Campos to take any particular action against Fuerte. (Tr. 98–99, 104.)

Gifford did not tell Campos that he himself had used identical vulgar language because he “didn’t recall that [he] had cussed.” (Tr. 102–103.)

After Campos’ meeting with Gifford, Campos met with CEO Escalante to discuss whether to issue discipline to Fuerte.<sup>7</sup> (Tr. 109.) Campos drafted a “Documented Letter of Counseling” to issue to Fuerte. (Tr. 88; GC Exh. 20.) CEO Escalante instructed Campos to include copies of Respondent’s February 21 and March 10, 2017 Performance Correction Memos to Fuerte to the to the August 10 Documented Letter of Counseling. (Tr. 109; GC Exh. 2

---

<sup>7</sup> Director Campos recalled that he sought CEO Escalante’s advice because Escalante was Respondent’s most experienced manager regarding matters pertaining to the Union. Tr. 117–118. CEO Escalante participates on the bargaining team for Respondent during the negotiations for a collective-bargaining agreement. Tr. 118. CEO Escalante also “approved” the issuing of the “[August 10] Documented Letter of Counseling” to Fuerte. Tr. 126. Again, on September 9, 2017, Campos informed Escalante that Fuerte was a “big” union supporter. GC Exh. 14 at 1.

at 16; GC Exh. 3 and GC Exh. 20.)

*G. Campos' August 9 Email to Supervisor Tully and Gifford's Confession*

On August 9, 2018, Campos emailed Supervisor Tully informing her that he needed to meet with Fuerte “about [Fuerte’s] attitude.” As noted earlier, during this email conversation,  
 5 Campos wrote, “I keep hearing that he is making remarks aboit (siq.) Janus and thr (siq.) bathroom a (siq.).” (GC Exh. 12).

While Campos unbelievably tried to explain that he had no idea what he was referring to in this email he sent to Tully, he admitted that he spoke with Supervisor Tully about Fuerte’s bathroom complaints before August 10, 2018. (Tr. 134).

Also, on August 9, 2018, Gifford reported the same two August 6 profanity incidents to his supervisor IT Manager Lisa Russell (Russell)—one from Fuerte where he used the word “shit” and one from Gifford where he said: “I don’t give a shit anymore - trying to get wireless internet for your personal devices”—as referenced above. (GC Exhs. 15 and 16.)

Unlike Director Campos, IT Manager Russell did not issue Gifford a Documented Letter  
 15 of Counseling for his August 6 use of profanity. Id.

*H. Respondent Disciplines Fuerte on August 10, 2018*

On Friday, August 10, 2018, Fuerte worked at the Sobering Center from 7 a.m. to 3:30 pm. (Tr. 58.) Supervisor Tully was also working on August 10 in the upstairs office of the Sobering Center. Id.

Also, on August 10, between 10 a.m. and noon, Director Campos arrived at the Sobering Center. (Tr. 59.) Shortly thereafter, Director Campos and Supervisor Tully came back downstairs to the intake counter where Fuerte was, Director Campos said: “Edgar [Fuerte], I need to talk to you about something” and Director Campos had some papers in his hand next to his body facing him. (Tr. 60.)

Fuerte saw the papers in Director Campos’ hand and said: “Before you continue, can I ...” and Director Campos cut Fuerte off and responded: “No, no, no, you don’t need union representation. You don’t need a union rep for this.” (Tr. 60.)

Director Campos next read to Fuerte from the papers he had in his hand—a Respondent Interoffice Memorandum to Fuerte copied to Respondent’s Human Resources from Director Campos dated August 10, 2018 with the subject: Documented Letter of Counseling (the August  
 30

10 Letter of Counseling).<sup>8</sup> (Tr. 60–61; GC Exh. 3.)<sup>9</sup>

The August 10 Letter of Counseling to Fuerte that Director Campos read out loud to Fuerte and later handed him a copy of states:

On 08/09/18 [sic.] you were working on your shift when a Manager came to maintain the facility for routine maintenance. Upon entering the facility, it is reported that you displayed a very negative attitude and adamantly disagreed with a newly installed desk, stating “what is this shit?” There have been numerous reports of your negativity, pessimism and poor attitude from many of your fellow peers as well.

Unprofessional behavior such as that displayed on 08/09/18 is not acceptable and does not align with the performance standards that Janus requires. Additionally, you’ve displayed a pattern of this unprofessional behavior as evidenced by 02/21/17 & 03/10/17 performance improvement plans. Janus of Santa Cruz strives to maintain a professional environment free from unprofessional behavior such as the use of vulgar language as stipulated in the Employee Handbook, ‘General Standards of Conduct.’ It is the expectation that you deliver “cheerful customer service at all times” as outlined in the Referral Specialist job description. Internal customer service to your peers and Managers is no exception.

This memorandum will serve as a documented letter of counseling regarding the Janus of Santa Cruz Professional Conduct standards. This memo will be kept in your employee file for one year. However, if repeated violations of policy continue to occur, this memorandum will be incorporated into a future investigation, which could result in possible disciplinary action, up to and including termination from the agency.

(GC Exh. 3.) The August 10 Letter of Counseling is initialed by Supervisor Tully as manager

<sup>8</sup> The August 10 Letter of Counseling incorrectly references Fuerte’s single use of profanity as occurring on August 9, 2018, rather than the correct date of the incident on August 6, 2018.

<sup>9</sup> Respondent stipulates and admits that only Fuerte has been disciplined for using the word “shit,” profane, vulgar and/or other obscene language, having a negative attitude, or for failing to maintain a cheerful attitude at Respondent because except for the August 10 Letter of Counseling discipline to Fuerte for his use of the word “shit” on August 6 - GC Exh. 3—Respondent admits that no other employees received similar discipline as Fuerte as there are no other documents reflecting Respondent’s disciplining employees for reasons related to the use of the word “shit,” the use of profane, vulgar, and/or obscene language; having a negative attitude; or for failing to maintain a cheerful attitude. Tr. 89–90. As to documents related to Respondent’s discipline of just two of its employees from May 15, 2017, May 10, 2017, and November 1, 2017 for their distinguishably more serious discretions, conduct or unprofessional behavior, however, Respondent produced three separate incidents of discipline prior to Fuerte’s August 6 incident—one for an employee making a racially mocking drawing and another incident where an employee made the police wait 10 minutes when they were at the front door of the Sobering Center waiting with an inmate/patient, and the employee was in the backroom instead of answering the police. GC Exhs. 19 and 22.

and Director Campos as a witness. Id.

When Director Campos first started to read the August 10 Letter of Counseling to Fuerte, Fuerte again requested a union representative be present and once again Campos repeated to Fuerte that he did not need a union rep for this. Campos further told Fuerte that the August 10 Letter of Counseling was “just a verbal counseling.”

After Director Campos finished reading it, he asked Fuerte if the single usage of vulgar language event described in the letter occurred and Fuerte said: “Yes, it did.” (Tr. 62.)

Fuerte then told Campos and Tully that his comment was not intended or directed to anyone or even in anger. Fuerte further explained that he was surprised to see this new desk there. Fuerte further informed the two managers that even the Santa Cruz Police Department had pointed out to the graveyard shift intake worker that the Santa Cruz police did not like the new large desk because of the way it obstructed the view of the inmate/patients' hands during the intake processing. (Tr. 62.)

Director Campos also told Fuerte that he actually does a really good job around the Sobering Center, he is a good worker, and that Fuerte does a good job. Tully agreed with Campos and told Fuerte that he is “a really good worker.... You work really good around here.... You've been here since day one of the opening of the Sobering Center.... A lot of your co-workers look to you as a leader, and you know your stuff.... You're a good worker.... You can show new employees what to do....” (Tr. 70.)

Next, Fuerte asked Campos the identity of the person who told him about Fuerte's comment when he first saw the new large desk in the front intake office and Campos told Fuerte it was Gifford. Fuerte next asked Campos if Gifford also told him about Gifford's use of profanity in front of Fuerte, Kyle, and Supervisor Tully on August 6, 2018. (Tr. 63–64.)

Campos was not believable when he responded saying that he was not aware of any such comment from Gifford and Campos asked Fuerte what Gifford has said. (Tr. 63.)

Fuerte responded and explained that Gifford got up from his desk and said: “I don't give a shit anymore about trying to get wireless internet for your personal devices.” (Tr. 63.) Campos then told Fuerte that he would talk to his manager or managers about Gifford's comment. (63–64.)

Fuerte then asked Supervisor Tully if she remembered this profanity incident with Gifford because she was present in the room on August 6. (Tr. 67.) Incredibly, Tully responded saying: “I don't remember if he [Gifford] said that, but I remember him getting angry and upset.” Id.

Director Campos next told Fuerte that he “needed to stop poking holes around here” and he also told Fuerte that “the bathroom thing, you need to let that go and just accept it.” (Tr. 64.)

Director Campos further told Fuerte that his “co-workers are comfortable with their jobs ...” and in fact “your peers have complained to me [Campos] about you.” Id.

Fuerte next asked Campos not for the names of these alleged “peers” but for “some examples of these complaints so I’m aware of them.” (Tr. 64.) Campos responded: “No, no, no, I’m not going to do that right now...” and “if you [Fuerte] don’t like working around here, you have other options.... You don’t have to work here.” Id.

Fuerte responded to Campos asking him: “Are you trying to intimidate me right now?” (Tr. 64–65.) Campos responded: “No, Edgar, I’m not intimidating you.” (Tr. 65.)

Fuerte then said: “Yes, you are, and I know you are, because I’ve been educated on it at union conferences about how managers use intimidation tactics and strategies to push people and get them to quit and leave their jobs, and I’ve seen you do that here with other employees, and it worked.... They left, and they quit their jobs.... I’m not that guy.... I’m not going to be the one that’s going to leave my job.... I’m going to stick it out for the long run.... I like my job, and I’m going to stay working here.” (Tr. 65.)

Fuerte asked Campos, “Do you believe that anyone, including managers, should be held accountable for their unprofessional behavior or cursing at the workplace?” (Tr. 67.) Campos responded that “No one should be displaying that type of behavior.” Id. Fuerte then proceeded to recount an instance in 2015 in which Campos stated: “How in the fuck is this shit supposed to help me, looking at your paperwork.” (Tr. 68.) Respondent’s counsel did not question Campos on this topic and consequently Campos never denied that this occurred. Although Fuerte asked Campos whether he disciplined himself, Campos deflected the question saying to Fuerte: “[T]his is about you.” (Tr. 68.)

At one point, Respondent stipulates that the only documents relied upon by Director Campos in issuing the August 10 Letter of Counseling to Fuerte is the 2017 Janus employee handbook. (Tr. 89–90; GC Exh 2 at 20; and GC Exh. 3.)

### *I. Respondent’s Shifting Positions Behind its Disciplining Fuerte*

In sum, on August 10, 2018, Campos’ August 10 Letter of Counseling discipline stated that the reason for Fuerte’s discipline was that he “displayed a very negative attitude and adamantly disagreed with a newly installed desk, stating ‘what is this shit?’” (GC Exh. 3.)

In Respondent’s September 6, 2018 position statement, Respondent’s reason for discipline suddenly shifted when it argued that Fuerte had displayed unprofessional and unacceptable conduct in the workplace towards a manager, something I find to be untrue. (GC Exh. 17 at 1.)

Several days later on September 14, 2018, Campos’ rationale for the August 10 Letter of Counseling changed to Fuerte expressing his dissatisfaction with the Sobering Center facilities.

(GC Exh. 4.) The September 14 statement was written 3 days before Respondent submitted a new position statement in the instant matter on September 17, 2018. (GC Exh. 18).

Supervisor Tully, who did not testify at hearing, wrote a memorandum dated September 17, 2018, which states that the purpose of the August 10 meeting was to address Fuerte's "negative attitude towards a change in the Recovery [Sobering] Center office." (GC Exh. 5). At the end of the meeting, Campos asked Fuerte to sign the discipline but Fuerte refused. (Tr. 69.) The meeting ended with the three shaking hands. Id.

Respondent admits in its September 17, 2018 position statement that letters of counseling and verbal warnings are forms of corrective actions. (GC Exh. 18). I find that Respondent understandably determined that the August 10 Letter of Counseling issued to Fuerte was a documented form of discipline and relevant to its progressive discipline policy because in it, Respondent reserved its right to incorporate the full August 10 Letter of Counseling by reference "into a future investigation, which could result in possible disciplinary action, up to and including termination from the agency." (GC Exh. 3 at 1.)

*J. The Common and Frequent Use of Profanities by Employees and Management at Respondent*

Brown confidently opined that in his 10 months at Respondent, profanity use by employees and supervisors at Respondent is quite frequent and commonly used by all with no verbal and/or written warnings or any discipline issued other than the August 10 Letter of Counseling to Fuerte at issue here. (Tr. 23–27, 70–72.)

Brown estimates that the word "shit" is used by employees at the Sobering Center on average of about 10–15 times a shift with approximately 12 of these occurrences being in the presence of Respondent supervisors. Brown also estimates that he has uttered the word "shit" on average of between 10–15 times per shift. Brown convincingly recalled that neither he nor any other employees at Respondent have ever been approached, spoken to, or disciplined by Respondent for their use of the word "shit" or any other vulgarity while working at the Sobering Center for Respondent. Fuerte also estimates that employees in the Sobering Center utter the word "shit" twice a week on average. (Tr. 23–27, 70–72.)

Brown also recalled that he has observed Supervisor Tully using the word "shit" at the Sobering Center 12 times while Fuerte estimates that Tully uses the word "shit" once a week on average in his presence in the Sobering Center. Brown does not recall any incident where Tully or any Respondent supervisor or manager were disciplined by Respondent for saying the word "shit" or any other vulgarity while working at Respondent. (Tr. 23–27, 70–72.)

Brown also opined that other profanities are regularly used by employees and patients during work hours at the Sobering Center such as: "fuck, piss, ass, asshole, bitch, son of a bitch,

verga [or dick], [and] motherfucker.”<sup>10</sup> Brown also recalls that these profanities, along with the word “shit” are used by Respondent employees on average about 10–15 times per shift. Fuerte also estimates that employees at the Sobering Center use the word “fuck” about 3 times per month and “bitch” 2 times per month. Brown also estimates that these vulgar words are used in the presence of Supervisor Tully about 12 times in the 10 months he has worked at Respondent and that Supervisor Tully herself has uttered these same profanities about 12 times in his presence. Fuerte recalls hearing Tully use of the word “fuck” two times over the years and the word “bitch” twice in the past 6 months without receiving any discipline from Respondent.<sup>11</sup> (Tr. 23–27, 70–72.)

## ANALYSIS

### I. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622. My credibility findings are generally incorporated into the findings of fact set forth above.

The witnesses who testified at the hearing were: Brown, Fuerte, Gifford, and Campos. For the most part, I found Brown and Fuerte to be honest, confident in their recollection of events and understanding of the questions asked at hearing, and reliable witnesses who provided consistent, plausible, and logical testimony. They answered the questions asked of them, without evasiveness, deceit, or exaggeration. Brown is a current employee at Respondent, but he is not a social acquaintance or friend to Fuerte outside of work. I have also considered the longstanding principle that “the testimony of current employees that contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests.” *Flexsteel Industries*, 316 NLRB 745, 745 (1995), enfd. 83 F.3d 419 (5th Cir. 1996), citing *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978), enfd. denied for other reasons, 607 F.2d 1208 (7th Cir. 1979), and *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); see also *Federal Stainless Sink Division of Unarco*, 197 NLRB 489, 491 (1972). As a result, I credit the testimony of current Unit employee Brown, an employee at Respondent over the testimony of Respondent’s witnesses, Director Campos and IT Manager Gifford, for this

<sup>10</sup> Brown understands that “verga” means “dick” in Spanish.

<sup>11</sup> Brown does not always work with Fuerte and it may be that Brown and his other coworkers at Respondent use profane language more frequently than Fuerte to explain Brown’s more frequent estimations of profanities usage at Respondent than Fuerte.

reason to the extent they contradict the testimony of Brown.

Director Campos, on the other hand, was frequently, evasive and nonresponsive, particularly on cross examination. For example, when pressed to identify Fuerte's alleged examples of numerous reports from Fuerte's coworkers of Fuerte's negativity, pessimism, and poor attitude, Campos could not provide any. Also, when Fuerte pointed out to Campos that Campos had previously use the profane word "fuck" in 2015, Campos did not address whether he, too, was disciplined, and, instead, Campos diverted the conversation away from him and back to Fuerte's conduct. (Tr. 64, 68.)

Campos' testimony was at times flippant, unsupported, and inconsistent as to the reasons why Respondent was disciplining Fuerte on August 10, 2018. Was it for using the word "shit" in alleged violation of Respondent's no profanity policy despite the common usage at Respondent of profane language by employees and managers without similar discipline? Was it Fuerte's continuous demand at County meetings as an active Union member, along with coworkers, and at many bargaining sessions requesting a much-needed second bathroom at the Sobering Center? Was it for Fuerte's alleged unprofessional behavior or a negative attitude on August 6? Was it for not being cheerful in the presence of customers despite there being no inmates/patients present on August 6 when Fuerte uttered his single use of the word "shit" to describe to no one in particular the new large desk that was now taking up the limited space in the front intake office of the Sobering Center? Was it for something Fuerte did on August 9, the date Respondent references in the August 10 Letter of Counseling and not August 6, the date Fuerte and Gifford both uttered the word "shit" to a limited number of employee(s)/supervisor(s)?

Gifford was also not believable when he did not recall at hearing if he uttered the word "shit" on August 6 in the Sobering Center after Fuerte similarly swore in the Sobering Center despite the fact that Gifford actually reported to Director Campos later that very same day that Fuerte had used the exact same vulgar language with his August 6 "shit" utterance but somehow did not remember his own use of the same word "shit." (Tr. 97, 101.)

## **II. Respondent Violated Section 8(a)(1) of the Act When Director Campos Threatened, Coerced, and Restrained Union Advocate Fuerte on August 10, 2018**

Here, the complaint paragraphs 6, 8, and 10 allege, and I find, that on August 10, 2018, Respondent, by Director Campos, at Respondent's facility, told employee and known union advocate Fuerte that he "should stop poking holes" and that he needs to "let go" of "the bathroom thing" and threatened Fuerte with job loss by telling him he could quit or go work elsewhere if he did not like the working conditions at Respondent as through this conduct the Board has found such statements by Director Campos have implied a threat of job loss to Fuerte restraining and coercing him in the exercise of the rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act. (Tr. 64-65; GC Exh. 1(e) at 2-3; GC Exh. 4.) See *Pacific Coast Sightseeing Tours & Charters, Inc.*, 365 NLRB No. 131, slip op. at 9 (2017)(The Board has found statements giving an employee the option of quitting or going to work elsewhere to be implied threats and



unlawful because such statements imply a threat of job loss); *Jupiter Medical Center Pavilion*, 346 NLRB 650, 651 (2006)(Comparable statements to union advocates or in the context of discussions about the Union violate Section 8(a)(1) because they imply that support for the Union is incompatible with continued employment).

5           Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by engaging in such conduct, as alleged in paragraphs 6, 8, and 10 of the complaint.

### **III.     Respondent's Discriminatory Discipline of Fuerte in Violation of Sections 8(a)(3) and (1) of the Act due to his Union or Protected Activities**

10           Paragraphs 7, 9, and 10 of the complaint allege that on August 10, 2018, Respondent, by Director of Programs Campos, issued Fuerte a Letter of Counseling because Fuerte assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities, and by this conduct, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Sections 8(a)(1) and (3) of the Act.

15           The question here is whether the Respondent disciplined Fuerte on August 10, 2018, because of his union activities or other protected concerted activities in violation of Section 8(a)(1) and (3) of the Act. Sections 8(a)(1) and (3) of the Act provide that it is unlawful for an employer to discriminate in terms of tenure or in regard to any term or condition of employment to encourage or discourage membership in any labor organization. 29 U.S.C. Section 158(a)(3).<sup>12</sup> Thus, an  
20           employer violates Section 8(a)(3) "by taking an adverse employment action ... in order to discourage union activity." *Ozburn-Hessey Logistics, LLC v. NLRB*, 833 F.3d 210, 217–218 (D.C. Cir. 2016)(quotation marks omitted). Adverse actions issued, such as Respondent's August 10 Letter of Counseling to Fuerte, because of his union or concerted activities, violate Sections 8(a)(1) and (3) of the Act. *Id.* Also, Respondent commonly allows all other employees and managers to  
25           use profane and vulgar language while working at Respondent without issuing similar discipline especially when there are no inmate/patient customers present at the utterance as in this case.

          Here, because the alleged Act violation turns on the Respondent's motive in taking the August 10 adverse action against Fuerte, the Board applies the burden-shifting analysis set forth in *Wright Line* to determine whether an employer's adverse action against an employee is  
30           unlawful. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), and approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Thus, the General Counsel must prove by a preponderance of the evidence: (1) union activity by the employee; (2) employer knowledge of that activity; and (3) antiunion animus by the employer to

---

<sup>12</sup> A violation of Section 8(a)(3) produces a derivative violation of Section 8(a)(1) of the Act. See *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 698 *fn.* 4 (1983).

establish antiunion motivation of employer's conduct in violation of Section 8(a)(3) and (1). *Mesker Door, Inc.*, 357 NLRB 591, 592 fn. 5 (2011).

Proof of an employer's unlawful motivation can be based upon direct evidence or can be inferred from circumstantial evidence, based on the record as a whole. *Robert Orr/Sysco Food Services*, 343 NLRB 1183 (2004); *Ronin Shipbuilding*, 330 NLRB 464 (2000). Indeed, "circumstantial evidence alone may establish unlawful motivation in a [Section] 8(a)(3) case." *Southwire Co. v. NLRB*, 820 F.2d 453, 460 (D.C. Cir. 1987) (citing *NLRB v. Link-Belt Co.*, 311 U.S. 584, 602 (1941)); accord *Laro Maint. Corp. v. NLRB*, 56 F.3d 224, 229 (D.C. Cir. 1995). Such evidence may include the employer's knowledge of protected activity, *Ozburn-Hessey*, 833 F.3d at 218, hostility toward protected conduct, including by the commission of other unfair labor practices, *Parsippany Hotel Mgmt. Co. v. NLRB*, 99 F.3d 413, 423–424 (D.C. Cir. 1996), the timing of the adverse action, *Inova*, 795 F.3d at 80, 82, and the pretextual nature of the employer's justifications, *Laro*, 56 F.3d at 230. Pretext may be shown in a variety of circumstances, including where an employer's explanations are implausible or illogical;<sup>13</sup> unfounded or untrue;<sup>14</sup> exaggerated or inflated;<sup>15</sup> or inconsistent, shifting, or post hoc.<sup>16</sup>

If the General Counsel successfully demonstrates that the protected union activity was a motivating factor for employer's adverse act, the burden then shifts to the employer to show that it would have taken the same action against the employee even absent the employee's protected activity. *Wright Line*, above at 1089. An employer does not meet its burden merely by showing that it had a legitimate business reason for its action. Rather, it must persuasively demonstrate that it would have taken the same action in the absence of the protected conduct. See *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016), citing authorities. If the evidence establishes that the proffered reasons for the employer's action are pre-textual—i.e., either false or not actually relied upon—the employer fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct. See *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003), citing *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

#### A. The General Counsel's Prima Facie Case

1. Fuerte openly engaged in protected, concerted activity near the time of his August 10 discipline

The evidence is overwhelming and undisputed that Fuerte was one of a few union organizers amongst Respondent's workforce during the summer of 2017 and the August 2017

<sup>13</sup> *Allegheny Ludlum*, 104 F.3d at 1368; *Wilson Trophy Co. v. NLRB*, 989 F.2d 1502, 1509 (8th Cir. 1993).

<sup>14</sup> *CCI Ltd.*, 898 F.3d at 32 & fn.\*; *Inova*, 795 F.3d at 88.

<sup>15</sup> *Sprain Brook Manor Nursing Home, LLC*, 359 NLRB 929, 942–943 (2013), incorporated by reference in 361 NLRB 607 (2014), enforced, 630 F. App'x 69 (2d Cir. 2015); *Jackson Hospital Corp. aka Kentucky River Medical Center*, 340 NLRB 536, 588–589 (2003).

<sup>16</sup> *Citizens Inv. Servs. Corp. v. NLRB*, 430 F.3d 1195, 1202 (D.C. Cir. 2005); *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007).

election won by the Union. Fuerte remained an active advocate for the Union in June and July 2018 when Fuerte and a handful of other union members were on local television and openly met with Santa Cruz County Supervisor Leopold to ask for more funding for a second bathroom at the Sobering Center to correct a bad work condition that Supervisor Tully understood as necessary from her time working at Respondent prior to becoming a supervisor. In addition, Fuerte was a regular member of the Union's collective bargaining team at all sessions in 2017 and 2018 with Respondent's bargaining representative, CEO Escalarte, who Director Campos informed in 2017 after the Union election that Fuerte "is a big union supporter." Fuerte and other employees were seeking to obtain a second bathroom at the Sobering Center any way they could and Fuerte tried to gain access to funding for such a second bathroom from the County Board of Supervisors in his role as union advocate, frequently sharing the mutual group complaint about work conditions and requesting a second bathroom and discussing this group demand at least 30 times with other Respondent employees, and making the Union's request for a second bathroom in the Sobering Center a recurring priority request for the Union at many bargaining sessions during the first half of 2018 with Respondent and CEO Escalarte.

Fuerte's use of the word "shit" when describing Respondent's sudden and unannounced placement of a new large desk in employees' workspace at the Sobering Center, a changed condition of employment, in passing by his coworker Kyle and Manager Gifford on August 6, 2018, on his way to the breakroom when no inmates/patients were present at the time, did not take Fuerte's statement about a changed work condition involving the surprise arrival of a very large desk outside the protection of the Act. The overwhelming evidence establishes that, while distasteful, the Respondent tolerated the widespread and common use of profanity in the workplace, including the words "shit," "bitch", and "fuck" in the front intake office of the Sobering Center. Considered in this setting when no inmates/patients were present at the time, Fuerte's single use of the word "shit" as he described his surprise at Respondent's unannounced decision to place a very large desk in the confined space of the front intake office of the Sobering Center would not cause him to lose the protection of the Act.

Also, evidence of the Respondent's policies and practices relating to the discipline of employees who use the type of language that Fuerte used in his August 6 utterance does not persuade me that Fuertes's August 6 utterance was unprotected. I further find that the Respondent's "Employee Handbook" policy, which Respondent cited at hearing and in its closing brief as the basis for disciplining Fuerte on August 10, prohibited abusive and vulgar language in the context of an employee's threatening, intimidating, coercing, or interfering with the performance of other employees. I further find that Fuerte's single August 6 utterance of the word "shit" when no inmate/patient customers were present was not threatening but was simply made in passing and not directed to any other employee and had no effect on any other employee's work performance. (Tr. 52-54; GC Exh. 2 at 20; R. Br. at 4-5.)

Respondent does not allege that Fuerte's August 6 utterance was directed at any other employee or manager but, instead, Respondent alleges that Fuerte "displayed a very negative attitude and adamantly disagreed with a newly installed desk." (GC Exh. 3 at 1.) Fuerte explained when he was disciplined that the Santa Cruz police also saw the placement of the new large desk as a safety hazard as it obstructed the view of the inmate/patients' hands during the intake processing. (Tr. 62.)

Further, prior to the single August 6 utterance, no evidence was produced at trial showing that Respondent issued any similar discipline, verbal or written in nature, to employees who had used vulgar language under the same circumstances here where the incident occurred outside the presence of Respondent's inmate/patient customers during a shift change where most employees were absent, the incident did not occur between an employee and their immediate supervisor/manager, it did not disrupt the workplace, and vulgar language was common in the area it was uttered by Fuerte. As a matter of fact, there was no evidence that any employee or supervisor was ever disciplined for their part of uttering similar vulgar language despite evidence that profanities use by employees and supervisors is a common occurrence at Respondent particularly in the front intake office of the Sobering Center. (Tr. 23–27, 70–72.)

## 2. Respondent knew about Fuerte's union and protected, concerted activities

Respondent obviously knew about Fuerte's numerous union activities including Fuerte's frequent requests for a second bathroom at the Sobering Center given the fact that Fuerte and CEO Escalarte were present at bargaining sessions for an initial collective-bargaining agreement where one of the terms sought by the Union was the addition of a second bathroom in the Sobering Center as requested for the mutual benefit of Respondent's employees. Director Campos mentioned directly to Fuerte when Respondent was disciplining Fuerte on August 10 allegedly for his lone utterance of the word "shit" on August 6, that Fuerte "needed to stop poking holes around here [at the Sobering Center]" and that "the [adding a second] bathroom thing, you need to let that go and just accept it." (Tr. 64.) On August 6, IT Manager Gifford also told Director Campos that Fuerte had made a statement about Respondent's Sobering Center bathroom. (Tr. 98, 103.) On August 9, 2018, Director Campos emailed Supervisor Tully informing her that he needed to meet with Fuerte "about [Fuerte's] attitude" and Director Campos further wrote, "I keep hearing that he [Fuerte] is making remarks aboit (siq.) Janus and thr (siq.) bathroom a (siq.)." (GC Exh. 12). Director Campos also admitted that he spoke with Supervisor Tully about Fuerte's bathroom complaints before August 10, 2018. (Tr. 134). Finally, on September 14, 2018, Director Campos' rationale for the August 10 Letter of Counseling to Fuerte changed back to Fuerte expressing his dissatisfaction with the Sobering Center facilities. (GC Exh. 4.)

It is well established that knowledge of union activities can be inferred from the pretextual reasons given for adverse personnel actions. See, e.g., *North Atlantic Medical Services*, 329 NLRB 85, 85–86 (1999), enf'd. 237 F.3d 62 (1st Cir. 2001). Given all of the circumstantial evidence referenced directly below in the Section III.A.3. on Respondent's animus, I have little doubt inferring that the Respondent had knowledge of Fuerte's union and protected concerted activities when it disciplined him on August 10.

Given the rebuttable presumption that a supervisor's knowledge of protected activities is imputed to the employer, and given Director Campos' active role in Fuerte's discipline, I find that the General Counsel has carried his burden by a preponderance of evidence in demonstrating that Respondent had knowledge of union activist Fuerte's frequent union activities including at least 30 conversations with co-workers about the need to add a second bathroom and his protected concerted complaints about the Sobering Center's lone bathroom and the urgent need to add a second bathroom and Fuerte's frequent requests for the same at the County, with fellow

employees, and at bargaining sessions to add a second bathroom. See *Club Monte Carlo Corp.*, 280 NLRB 257, 261 (1984) ( ).

3. Respondent’s animus toward Fuerte’s union activities and the protected,  
concerted activity

The General Counsel must make a showing sufficient to support a conclusion that animus toward the protected conduct was a motivating factor in the employer’s decision to discipline an employee. *Id.* at 261–262. Direct evidence of unlawful motivation is seldom available, and it may be established by circumstantial evidence. *Lucky Cab Co.*, 360 NLRB 271, 274–275 (2014); *Abbey Transportation Services*, 284 NLRB 698, 701 (1987). Persuasive evidence of pre-textual reasons for discharge strongly supports a finding of animus. *Relco Locomotives, Inc.*, 358 NLRB 229 229 (2012), *enfd.* 734 F.3d 764 (8th Cir. 2013); *Tidewater Construction Corp.*, 341 NLRB 456, 458 (2004). Also, such evidence may include the employer’s knowledge of protected activity, *Ozburn-Hessey*, 833 F.3d at 218, and hostility toward protected conduct, including by the commission of other unfair labor practices, *Parsippany Hotel Mgmt. Co. v. NLRB*, 99 F.3d 413, 423–424 (D.C. Cir. 1996), the timing of the adverse action, *Inova*, 795 F.3d at 80, 82,

First, when explaining its August 10 discipline of Fuerte, Respondent’s August 10 Letter of Counseling lists the following alleged reasons for taking its adverse action against him:

1. Fuerte displayed a very negative attitude and adamantly disagreed with a newly installed desk, stating “what is this shit?”
2. There have been numerous reports of Fuerte’s negativity, pessimism and poor attitude from many of your fellow peers as well.
3. Unprofessional behavior such as that displayed on 08/09/18 [sic.] is not acceptable and does not align with the performance standards that Janus requires.
4. Fuerte displayed a pattern of this unprofessional behavior as evidenced by 02/21/17 & 03/10/17 performance improvement plans.
5. Respondent strives to maintain a professional environment free from unprofessional behavior such as the use of vulgar language as stipulated in the Employee Handbook, ‘General Standards of Conduct.’
6. Respondent expects Fuerte to deliver “cheerful customer service at all times” as outlined in the Referral Specialist job description....

(GC Exh. 3 at 1.)

It is telling that Director Campos issued the August 10 discipline to Fuerte and met with him and saw fit to mention Fuerte’s protected activities—Fuerte apparently “poking holes” around the Sobering Center, at County meetings, with fellow employees, and at bargaining sessions, and that Fuerte needed to let go of the employees’ request for a second bathroom. Director Campos was unable to provide Fuerte, however, with any actual examples of the made-up or false reasons given for Fuerte’s discipline, such as the identity of any peer who made reports of Fuerte’s negativity, pessimism and poor attitude; an explanation why Fuerte’s lone utterance of the word “shit” caused him discipline when no other employee or Campos or Gifford received discipline for

using profanity that is commonly used at Respondent; and why “cheerful customer service” was listed at all in the August 10 Letter of Counseling when there were no inmate/patient customers present when Fuerte uttered the word “shit” on August 6, not August 9 as falsely stated on the August 10 discipline. (GC Exh. 3 at 1.)

As mentioned above, the non-pretext or true reason given for Fuerte’s discipline is actually told to him on August 10 and in other conversations involving Director Campos in his explanation to Fuerte for the discipline. Director Campos saw fit to mention Fuerte’s union and protected activities on August 10 when he issued the discipline to Fuerte—Fuerte, in his role as a union activist, apparently “poking holes” around the Sobering Center, at County meetings, with fellow employees, and at bargaining sessions and that Fuerte needed to let go of the employees’ request for a second bathroom. (Tr. 64.) While not openly admitting that these are the actual reasons for the discipline to Fuerte, I find that the circumstantial evidence in this case infers that Fuerte’s union and protected concerted activities became a thorn in the sides of Director Campos and CEO Escalarte, and they disciplined Fuerte for being a union activist and for his active role in attempting to secure a second bathroom at the Sobering Center in a variety of ways known to Campos and Escalarte although these actual reasons did not make it to the written August 10 Letter of Counseling. (See GC Exh. 3 at 1.) Director Campos’ open admission of a causal link between Fuerte’s protected union activities and, specifically, his concerted request for a second bathroom at the Sobering Center and the August 10 discipline suffices to demonstrate such a nexus. See *North Hills Office Services, Inc.*, 346 NLRB 1099, 1115 (2006) (Despite a personal request for a raise by a Union member and not a concerted request, the Board affirmed an administrative law judge’s determination that Respondent’s manager’s overreaction to the union employee’s request for a raise was motivated by his displeasure with her and a co-worker’s union leafleting activity.).

Further, I conclude that the strong evidence of pretextual reasons for discipline supports a finding of animus toward Fuerte’s union and protected activities. For example, Respondent’s reasons for disciplining Fuerte on August 10 changed from August 6, 2018, the day of the utterance through the March 2019 hearing. They include that Fuerte violated Respondent’s standards of conduct policy by uttering the vulgar and profane term: “shit.” However, Fuerte is the only known employee to have been disciplined for this utterance despite overwhelming evidence that the use of this term and many other similarly vulgar terms are commonly used by many employees and supervisors without discipline. Examples of IT Manager Gifford using the same vulgar term: “shit” later on August 6 in the same location as Fuerte, in the Sobering Center, in front of three employees and another supervisor without discipline and Director Campos’ use of vulgar language without discipline in 2015 show that Fuerte was disparately treated when only he received discipline and many other employees and supervisor use vulgar language at Respondent without receiving discipline. I conclude that this disparate treatment supports the inference that Respondent wanted to make an example of Fuerte in order to discourage union activities and the specific protected concerted activity of Fuerte and the Union negotiating the addition of a second bathroom in the Sobering Center at bargaining sessions for the mutual benefit of all Respondent’s employees.

Another false reason given by Respondent for Fuerte’s August 10 discipline was that many times he was reported by his peers to be negative and pessimistic at work with a poor attitude. Respondent did not provide evidence of its employees’ complaints about Fuerte acting this way.

I find that Respondent seized on Fuerte's lone utterance on August 6 of the word "shit" as a pretext to mask its discrimination. Fuerte would not have received any discipline but for his role as a union activist and Fuerte's strong role at County meetings, with fellow employees, and at the bargaining sessions for the Union advocating a second bathroom for the Sobering Center where Fuerte and others worked. The August 10 discipline to Fuerte contains language about vague reports of Fuerte's alleged "negativity, pessimism, and poor attitude," euphemisms, I find, in the circumstances of this case, for union animus. See *Children's Studio School Public Charter School*, 343 NLRB 801, 805 (2004) (explaining that an employer's comments that an employee does not have the right spirit, has a bad attitude, and is argumentative and uncooperative can be veiled references to the employee's protected activities, and thus circumstantial evidence of animus); see also *Schaumburg Hyundai, Inc.*, 318 NLRB 449, 458 (1995) ("Goff not working well with his team and having a bad attitude, euphemisms found to be union animus").

Respondent vacillated between these various false reasons while occasionally mentioning the true reason. For example, about a month after the August 10 discipline, on September 14, 2018, Director Campos' rationale for the August 10 Letter of Counseling changed back to Fuerte expressing his dissatisfaction with the Sobering Center facilities. (GC Exh. 4.) The September 14 statement was written 3 days before Respondent submitted a new position statement in the instant matter on September 17, 2018, where Respondent reverted to one of its pretextual reasons for the discipline -- Fuerte displaying a negative attitude, uttering the word "shit," and acting unprofessional and unacceptable in the workplace to Respondent on August 9.<sup>17</sup> (GC Exhs. 17 and 18).

These shifting positions are indicative of animus. *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007) (finding animus in the employer's raising a new explanation for discharge at hearing, and noting that "an employer's shifting explanation for disciplinary action taken supports an inference of pretext").

The Board has long held that a close timing between an employee's protected activity and an employer's adverse action is indicative of employer animus toward the protected activity. *Lucky Cab Co.*, 360 NLRB 271, 274 (2014); *ManorCare Health Services-Easton*, 356 NLRB 202, 225 (2010). Here, Fuerte was disciplined on August 10 soon after attending the late June 2018 County Supervisors' meetings when he spoke with other union members to try to obtain funding for a second bathroom. Fuerte also attended bargaining session meetings for the Union in the summer of 2018 where the requested second bathroom was a term and condition of the Union's bargaining requests, and Fuerte had numerous conversations with fellow employees where adding a second bathroom was a common demand by all employees at the Sobering Center. One or two months after the highly public County Supervisors' meetings, Respondent disciplined Fuerte on August 10 for reasons never before used by Respondent for disciplining employees while using profanities like "shit" and other words were commonplace at Respondent. I find that the close timing between Fuerte's continued requests to add a second bathroom in June and July at public County meetings and at bargaining sessions and the August 10 discipline is indicative of Respondent's animus toward Fuerte's union activities.

---

<sup>17</sup> Even the August 9, 2018 date referenced for Fuerte's conduct resulting in his discipline is false and in error as the alleged incident occurred on August 6, 2018. See GC Exh. 3 at 1.

In addition, as discussed in more detail in Section II. above, I have found that Respondent independently violated Section 8(a)(1) of the Act through statements made on August 10, 2018 by Director Campos to Fuerte. The Board also finds animus towards employees protected concerted activities where contemporaneous unfair labor practices are found, as in this case where there was unlawful threats made by Director Campos to Fuerte on August 10. See *Bates Paving & Sealing, Inc.*, 364 NLRB No. 46, slip op. at 3 (2016) (contemporaneous unfair labor practices evidence of animus).

Furthermore, Respondent cannot provoke Fuerte by suddenly inserting an unannounced large desk in the small workspace at the Sobering Center rather than adding the much-needed second bathroom requested by Fuerte and other employees to incite Fuerte to commit his single August 6 utterance indiscretion and then rely on that conduct to discipline Fuerte. The Board has “long recognized that an employer cannot provoke an employee to the point where he commits an indiscretion and then rely on that conduct to terminate his employment.” *Key Food*, 336 NLRB 111, 113 (2001) (employee touched supervisor on the shoulder following supervisor’s abusive tirade). See also *Sprain Brook Manor Nursing Home, LLC*, 359 NLRB 929, 943 (2013) reaffirmed. 361 NLRB 607 (2014), *aff’d* \_ F.3d \_ (2<sup>nd</sup> Cir. 2015) (Same).

Respondent’s argument that Fuerte’s single use of vulgar language extinguished his Section 7 protection is incorrect. An employee’s right to engage in concerted activity permits leeway for impulsive behavior, which must be balanced against the employer’s right to maintain order and respect. *NLRB v. Thor Power Co.*, 351 F.2d 584 (7<sup>th</sup> Cir. 1965). The Board uses a 4-factor test to determine whether communication between an employee and a manager or supervisor in a workplace is so derogatory that it causes the employee to lose the protection of the Act. *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979).

Applying the *Atlantic Steel* test, 245 NLRB 814, 816 (1979), I find that all four *Atlantic Steel* factors strongly weigh in favor of protection. As noted above, the August 6 Fuerte outburst occurred in the front intake office of the Sobering Center during a shift change when no inmate/patient customers were present and no work was disrupted. The August 6 utterance occurred after Respondent had just changed the terms and conditions of employment there by adding a new large desk in the confined workspace after Fuerte and the Union had pointed out on numerous occasions to Respondent management, at public County supervisors’ meetings, and at bargaining sessions, that a second bathroom was desperately needed in the Sobering Center – not a large desk. Fuerte’s August 6 utterance was witnessed by IT Manager Gifford who is not Fuerte’s supervisor and EMT employee Kyle. This is one factor in favor of protection under the Act. *Id.* Fuerte’s August 6 utterance was brief—a single utterance of the word “shit” not addressed at anyone in particular—and not a sustained course of action. See *Kiewit Power Constructors, Co.*, 355 NLRB 708, 710 (2010) (finding that a single, brief verbal outburst weighed in favor of protection), *enfd.* 652 F.3d 22 (D.C. Cir. 2011). Additionally, Fuerte’s outburst was not accompanied by any threats or menacing behavior. See, e.g., *Staffing Network Holdings, LLC*, 362 NLRB 67, 67 fn. 1, 75 (2015) (adopting the judge’s finding that the nature of the outburst weighed in favor of protection where, among other things, the employee was not hostile and neither raised her voice nor made threats), *enfd.* 815 F.3d 296 (7<sup>th</sup> Cir. 2016).



Moreover, vulgar language is commonly used at Respondent without discipline and IT Manager Gifford himself used identical vulgar language in the same workplace, soon after Fuerte's outburst on August 6, in front of an additional supervisor (Tully) and employee (EMT Lusy). So, too, had Director Campos, Supervisor Tully and many others uttered profanities at Respondent without discipline. See generally *Corrections Corp. of America*, 347 NLRB 632, 636 (2006) (finding that an employee did not lose the Act's protection by cursing where profanity was commonly used by employees and supervisors and was used in the room where the employee's conduct occurred). Lastly, I find that Respondent's sudden addition of the new large desk without warning to Fuerte and other employees provoked Fuerte after all of Fuerte's efforts known to Respondent to obtain a new second bathroom at the Sobering Center. See *Network Dynamics Cabling*, 351 NLRB 1423, 1429 (2007) (finding that an employee's outburst during protected conduct was provoked by certain comments made by a supervisor where, although the comments were not alleged as unfair labor practices, the comments clearly sought to interfere with the employee's protected right to assist organizational activity).

Finally, the construct of Respondent's proffered defense to Fuerte's August 10 discipline is based on assertions not supported by the record. In particular, the evidence fails to show that: (1) vulgar language like Fuerte used on August 6 was not commonly used at Respondent or that anyone but Fuerte was ever disciplined for using vulgar language; (2) any of Fuerte's peers complained to management about Fuerte's unprofessional behavior, negativity, pessimism, or poor attitude; (3) any inmate/patient customer was listed in the August 10 Letter of Counseling when no inmate/patient customers were present on August 6 when Fuerte uttered the word "shit." In sum, the General Counsel has proved that a reason for Fuerte's discipline was discriminatory motivation or union animus and he has also proved that several Respondent's reasons for the August 10 discipline were pretexts. Accordingly, I find that the Respondent violated Sections 8(a)(3) and (1) of the Act by disciplining Fuerte due to Respondent's union animus and discriminatory motivation in response to Fuerte's union and protected concerted activities, as alleged in paragraphs 7, 9, and 10 of the complaint.

*B. Respondent's failed showing that it would have disciplined Fuerte in the absence of the union and protected conduct*

I further find that the General Counsel has met his burden, and the burden shifts to Respondent. An employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the union and protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011); *JCR Hotel, Inc. v. NLRB*, 342 F.3d 837, 841 (8th Cir. 2003). If the employer's proffered reasons are pretextual (i.e., either false or not actually relied on) as here, the employer fails to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007). As Respondent's explanations for the August 10 discipline were pretextual, Respondent fails to meet this burden. *Golden State Foods Corp.*, 340 NLRB at 385.

Further and finally, Director Campos' communications with Fuerte, Tully, Gifford, and Escalarte leading to the August 10 discipline and thereafter show that Fuerte's union activities and his protected concerted requests to add a second bathroom at the Sobering Center factored into the

August 10 discipline of Fuerte. Respondent therefore cannot prove that it would have disciplined the Charging Party Fuerte absent his union and protected activities. Moreover, Respondent has never disciplined any employee before Fuerte for using vulgar language which is in common usage at Respondent. I conclude therefore that Respondent's proffered reasons for Fuerte's August 10 discipline are exaggerated and to a large extent simply false. Because Respondent's defense is pretextual in significant measure, it is inadequate to meet Respondent's burden of proof to rebut the General Counsel's prima facie case, and precludes a finding that Fuerte's discipline took place for nondiscriminatory reasons or that he would have been disciplined had it not been for his Union and protected concerted activity. Therefore, I find that Fuerte's discipline by Respondent was motivated by his June and July 2018 union and protected, concerted activities and Respondent is in violation of Fuerte's rights under Section 8(a)(1) and (3) of the Act.

### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The National Union of Healthcare Workers (the Union) is a labor organization within the meaning of Section 2(5) of the Act.
3. Since August 2017, the Union has been the exclusive collective-bargaining representative of the employees in the bargaining unit.
4. By threatening, coercing and restraining employee Edgar Fuerte on August 10, 2018, for engaging in protected, concerted activity and for his union activities, Respondent violated Section 8(a)(1) of the Act and interfered with, restrained, and coerced Fuerte in the exercise of the rights guaranteed in Section 7 of the Act.
5. By disciplining employee Edgar Fuerte on August 10, 2018, for engaging in union and protected, concerted activities, Respondent violated Section 8(a)(1) and (3) of the Act.
6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

### REMEDIES

Having found that the Respondent has engaged in certain unfair labor practices, I find that they must cease and desist from such practices and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having concluded that the Respondent is responsible for the unlawful discipline of employee Edgar Fuerte, the Respondent shall be required to expunge from its files any and all references to the August 10, 2018 Documented Letter of Counseling, and to notify Edgar Fuerte in writing that this has been done and that this unlawful discipline will not be used against him in any way.

The Respondent shall also post the notice in accord with *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. *Id.* at 13.

On these findings of fact, conclusions of law, and upon the entire record, pursuant to Section 10(c) of the Act, I hereby issue the following recommended<sup>18</sup>

### ORDER

The Respondent, Janus of Santa Cruz, a non-profit California corporation, with facilities in the County of Santa Cruz, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Preventing employees from exercising their Section 7 rights to form, join, or assist a Union, choose a representative to bargain with Respondent on behalf of the employees, act together with other employees for their benefit and protection, or choose not to engage in any of these protected activities;

(b) Threatening employees if they engage in protected concerted or union activities;

(c) Disciplining or otherwise discriminating against employees for engaging in union and other protected concerted activities; and

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of this Order, rescind the August 10, 2018 dated Documented Letter of Discipline issued to Edgar Fuerte, expunge any and all references thereto from the personnel file of Edgar Fuerte, and within 3 days thereafter, notify employee Edgar Fuerte in writing that this has been done and that this disciplinary action will not be used against him in any way.

(b) Within 14 days after service by the Region, post at all locations operated by Respondent in which bargaining unit employees are employed in Santa Cruz County, California, the attached notice marked "Appendix."<sup>19</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's Chief Executive Officer, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or by other electronic means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of its facilities, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at the closed facility(ies) at any time since August 10, 2018.

<sup>18</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>19</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5

Dated, Washington, D.C., July 12, 2019

A handwritten signature in black ink, appearing to read "Gerald M. Etchingham". The signature is written in a cursive, flowing style.

Gerald Michael Etchingham  
Administrative Law Judge

10

**APPENDIX**

**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose representatives to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with restrain or coerce you in the exercise of the above rights.

WE WILL NOT impliedly threaten you or solicit you to quit by telling you to work somewhere else if you do not like your working conditions.

WE WILL NOT discipline you because of your union membership or support or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL remove from our files all references to the documented letter of counseling of Edgar Fuerte and WE WILL notify him, in writing, that this has been done and that the warning will not be used against him in any way.

**JANUS OF SANTA CRUZ,  
a California non-profit corporation**

---

(Employer)

Dated

By

---

(Representative)

---

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

**Address: 1301 Clay Street, Suite 300-N, Oakland, California 94612**

**Telephone: (510) 637-3300**

**Hours of Operation: 8:30 a.m. to 5:00 p.m.**

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/32-CA-226320](http://www.nlrb.gov/case/32-CA-226320) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM  
THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR  
COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS  
NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO  
THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 510-637-3300.**